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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,147	01/26/2001	John J. Castellot JR.	JCW-001	6199
959	7590	12/23/2004	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/771,147	CASTELLOT ET AL.
	Examiner	Art Unit
	Jerome W Donnelly	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 5-11-04

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) \_\_\_\_\_ is/are pending in the application. 1-16, 18-25, 32-34-36 and 39-53  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration. 3, 18-38, 46-48 52 and 53

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected. 1-2, 4-16, 39-45 and 49-51

7)  Claim(s) \_\_\_\_\_ is/are objected to. 8

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a)  All b)  Some \* c)  None of:  
 1.  Certified copies of the priority documents have been received.  
 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Jerome W. Donnelly  
Primary Examiner

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 6, 8, 11, 14, 40, and 45 rejected under 35 U.S.C. 102(b) as being anticipated by Flick.

Claims 1, 2, 3, 4, 6, 8, 11 and 14 are rejected for the same reasons as set forth in the office action of 3-20-2003. Applicant additional language of “substantially flat” and “along a longitudinal axis” is met by the device of Flick.

Flick discloses a device having a flat bottom surface at ‘30’ and wherein the gliders slide along a longitudinal axis.

Flick discloses an exercises comprising textured footpad a base having tracks, glides (30b) pulleys a cable, end (bumpers) 20 and 22.

In regard to claim 14 the examiner notes that it is well known and that it would have been obvious for one of ordinary skill in the art to coat, the track and track engaging component of Flick with plastic, Teflon grease etc for the purpose aiding a smooth glide and thus a noise reducing combination.

Claims 1, 5, 7, 11, 12, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedebach et al.

Friedebach et al discloses a leg exercise comprising foot pads, a base member track, glides in the form of wheels, foldable components, resistance, a rigid toe straps (60) feet (42) and an elevated guard (116).

In regard to claim 1 and the most recent amendment the gliders of Friedebach et al. have flat surfaces.

Claims 1, 9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawl.

Rawls discloses a device comprising a foot pad, a base member comprised of several components, rack members gliders, an incline stand (36) mounted to a bottom surface of a portion of the base member at or to element (35) and said foot pad being connected to glide members by bolts (77).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41 and 42 rejected under 35 U.S.C. 103(a) as being unpatentable over Flick in view of Borabaugh.

The examiner notes that it would have been obvious to one of ordinary skill in the art to provide adjustable resistance means to the foot pad of flick in the form of friction pads adapted to push against the track, an adjustment rod and a turnbuckle in view of the break arrangement disclosed by the device of Rorabaugh.

Claim 1, 39 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess.

Hess discloses a device comprising footpads, a base member having tracks gliders having flat surfaces coupled to footpads and elastic straps as claimed.

In regard to claim 39, and as broadly as it is claimed elements 32 are considered as channels.

Claims 1, 2, 44 and 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermelin in view Berryman.

Hermelin discloses the device of claims 2, 44, 49 and 51 substantially as claimed. Hermelin discloses a device having first and second gliders 5 and 6, a base and a track divider (69).

Berryman however, does note disclose his device wherein it includes a hinge member.

Berryman however, discloses the teaching of providing a hinge member in an exercising device for the purpose allowing a device to be folded for ease of storage and to allow the device to be more compact.

Given the above teaching of Berryman the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a hinge means as claimed length wise, or widthwise, on the device of Hermelin for the purpose of making his device more compact. The examiner considers the location and orientation of the hinge member of Hermelin as a design choice, absent a teaching of the criticality thereof.

In regard to claims 1 and 49 the examiner further notes that it would have been obvious to provide footpads on top of the gliders of Hermelin configured to receive a user's feet. A foot pad being padding and gliders 5 and 6.

In regard to claim 50 see the cable Fig (16).

In regard to claim 51 the examiner considers the gliders (236) of Hermelin to be of a coefficient which allows ease of a slidable motion.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flick in view of Traver.

The examiner notes that it would have been obvious to one of ordinary skill in the art to provide a track bumper on the end of each track for the purpose of providing a softer impact of the sliding footpads of Flick against the track ends.

Claims 3, 18-25, 32, 34-36, 46-48, 52 and 53 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on dated 5-11-04.

Applicant's arguments filed 7-23-03 have been fully considered but they are not persuasive. Because the prior art discloses glider means which have substantially flat surfaces.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (703) 308-2668.

JEROME W. DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "JEROME W. DONNELLY", is positioned below the printed title. The signature is fluid and cursive, with a large, stylized 'J' at the beginning.